Calendar No. 857

98TH CONGRESS
2d Session

SENATE

REPORT
98–436

A GRANT OF CERTAIN LANDS TO THE TOWN OF OLATHE, COLO.

MAY 10 (legislative day, APRIL 30), 1984.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 1547]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1547) to amend the conditions of a grant of certain lands to the town of Olathe, Colo., and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of S. 1547, as reported, is to change the terms and conditions under which the town of Olathe, Colo., now holds certain lands which it obtained from the United States pursuant to a 1919 Act of Congress.

BACKGROUND AND NEED

The 1919 act (40 Stat. 1317) permitted the town of Olathe, Colo., to buy the surface estate in 640 acres, more or less, which the town needed for its domestic water supply storage and delivery system. The purchase price was set at $1.25 per acre, with the minerals reserved to the United States. The town was required to take the lands subject to a reverter clause which provides that the lands will revert to the United States if the town attempts to sell the lands or uses them for any other purposes.

The town constructed and maintained a water storage and delivery system using these lands, and for some 60 years this was the sole source of domestic water for the town of approximately 1,250 people. Now the town participates in a local water users association which furnishes treated domestic water to several communities. In order to participate with the association, the town must give the association the right to

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the reservoir waters in amounts equal to those the town draws from the association. Therefore, it must retain the water rights which are based on maintenance and use of the reservoir and supply system built on the lands obtained under the 1919 act. Those rights are currently the town's reserve water supply.

To assure retention of these water rights, the town must repair and maintain the reservoir and associated pipelines and waterworks. However, this is an expensive undertaking, and the town is apparently unable to obtain the necessary funds for this purpose through any means presently available to them. Therefore they wish to be able to use the lands held pursuant to the 1919 act as collateral for loans which would be used for repairing and maintaining the water system. That cannot be done under the terms of the 1919 act as it presently stands, and the purpose of this bill is to amend the act to permit this.

Legislative History

S. 1547 was introduced by Senator Armstrong (for himself and Senator Hart) on June 27, 1983. A hearing on S. 1547 and H.R. 1191 (the House passed companion bill) before the Subcommittee on Public Lands and Reserved Water was held on October 6, 1983. The administration opposes enactment of S. 1547 and H.R. 1191 unless they are amended as recommended by the Department of the Interior. In an open business session on April 25, 1984, the Senate Committee on Energy and Natural Resources ordered S. 1547, without amendment, favorably reported.

Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on April 25, 1984, by unanimous vote of a quorum present recommends that the Senate pass S. 1547, as described herein.

The rollcall vote on reporting the measure was 18 yeas and 0 nays as follows:

YEAS	NAYS
Mr. McClure	
Mr. Hatfield [1]	
Mr. Domenici [1]	
Mr. Wallop [1]	
Mr. Warner	
Mr. Murkowski	
Mr. Nickles	
Mr. Hecht	
Mr. Chafee [1]	
Mr. Evans	
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Metzenbaum	
Mr. Matsunaga [1]	
Mr. Melcher	
Mr. Bradley	
Mr. Levin [1]	

[1] Indicates voted by proxy.

Section-by-Section Analysis

As reported, S. 1547 amends the act of March 3, 1919 (40 Stat. 1317) in three specific ways:

1. By deleting the limitation which constrains the uses to which the lands can be put—namely, "for the purpose of the protection of the reservoirs and water supply pipelines and water works system of Olathe";

2. By deleting the clause providing that title to the lands will revert to the United States should the lands or any part thereof be sold or put to some use other than the uses specified in the 1919 act; and

3. By adding to the 1919 act a new clause which would impose a penalty (to be paid to the United States by the town) in the event of any voluntary sale or other voluntary alienation of all or part of the lands which occurs on or before January 1, 1994. The penalty established by this clause is set at an amount equal to the greater of either (a) the proceeds of the sale, less the value at time of sale of any improvements made by the town, or (b) the fair market value of the lands, less the value at the time of sale or alienation of any improvements made by the town.

Cost and Budgetary Considerations

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., April 27, 1984.

Hon. James A. McClure,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 1547, a bill to amend the conditions of a grant of certain lands to the town of Olathe, Colo., and for other purposes, as ordered reported by the Senate Committee on Energy and Natural Resources, April 25, 1983.

Based on this review, it is expected that no significant cost to Federal, State, or local governments would be incurred as a result of enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Eric Hanushek
(For Rudolph G. Penner, Director).

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the committee made the following evaluation of the regulatory impact which would be incurred in carrying out S. 1547 as reported. S. 1547 would amend the act of March 3, 1919 (40 Stat. 1317). The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy. Little, if any, additional paperwork would result from the enactment of S. 1547.

Executive Communications

The pertinent legislative reports and communications received by the committee from the Department of the Interior setting forth executive agency recommendations relating to S. 1547 are set forth below:

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., May 3, 1984.

Hon. James A. McClure,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, D.C.

Dear Mr. Chairman: This responds to your request for our views on S. 1547, an act "To amend the conditions of a grant of certain lands to the town of Olathe, Colorado, and for other purposes."

We oppose enactment of S. 1547.

S. 1547 is identical to H.R. 1191, as passed by the House of Representatives on May 17, 1983. This legislation would amend the act of March 3, 1919 (40 Stat. 1317), by deleting the requirement that the town of Olathe use the lands conveyed to the town under that act only for the protection of reservoirs and waterworks, and would remove the provision requiring that the lands revert to the United States if they are used for another purpose or sold. Under S. 1547, if any of the lands are sold or otherwise alienated by the town on or before January 1, 1994, the proceeds of such sale (excluding the value of any improvements made by the town) or the fair market value of the lands or part thereof (excluding the value of improvements made by the town) at the time of such sale or alienation, whichever is greater, would be paid to the United States by the town. However, the payment to the United States would not have to be made if the sale occurs as a consequence of a judgment at law or equity to recover sums owed by the town pursuant to a mortgage, sale to a trustee, or similar agreement entered into by the town to secure funds for public purposes directly related to repair, maintenance, or modernization of the reservoirs, water supply pipelines or waterworks system of the town.

By the act of March 3, 1919, the Secretary of the Interior was directed to convey 640 acres to the town of Olathe for the purpose of the protection of the town's reservoirs, water supply pipelines, and waterworks system upon payment of $1.25 per acre. The act further directed that title to the land revert to the United States if any of the land was sold or ceased to be used for the purposes provided in the act. Mineral interests in the lands were reserved to the United States.

The town of Olathe no longer uses the reservoirs or pipelines as its primary source of domestic water, but receives its water from the Uncompahgre Valley Water Users Association. It is our understanding that, under the terms of agreement with the Association, the town is required to maintain the reservoirs and pipelines as a back-up system for all the Association users. We are informed that these pipelines are leaking badly and in need of repair.

At an April 5, 1983, hearing before the House Committee on Interior and Insular Affairs, the mayor of Olathe testified that the town has

serious financial problems and has recently incurred major expenditures including replacement of the water distribution system in 1979 at a cost of $520,000, and the improvement in 1982 of the sewer system and aeration of the lagoons at a cost of $331,000. Because the town has reached its State mandated limit on issuance of bonds to finance future improvements, and because fifty percent of its population (1,252 in 1980) are persons with low and moderate incomes, raising additional capital is difficult. Therefore, we understand the town would like to use the subject land as collateral for a loan, the proceeds of which are to be used to repair the water supply pipelines of the back up water system.

The existence of the reverter clause in the conveyance of the land to the town, makes it unaccepeable collateral for such a commercial loan. Removal of the reversionary interest of the United States would allow the town of Olathe to use the reservoir property as collateral for the loan. We understand that it is the town's intention to pay any such financing in due course and not to allow the property to pass out of public ownership. However, if the town were to mortgage the property conveyed under the 1919 act, based on the town's financial situation, it would appear that there would be a distinct possibility of default. If the town does default on a mortgage at any time, or if it sells that land any time after January 1, 1994, the property would pass out of public ownership.

Moreover, under the proposed legislation, the town would be free to sell or otherwise dispose of the lands after January 1, 1994. We do not understand the need for the provision in the bill that would authorize such a sale since the town assures us that it does not intend to sell the property. This would create an unfair windfall to the town at the expense of the United States. The lands were conveyed at less than fair market value for a public purpose. Thousands of acres of public land have been conveyed by the United States with similar conditions under the Recreation and Public Purposes Act. If this legislation is enacted, other communities could attempt to have similar legislation introduced, allowing them to dispose of their property or use it for any purpose after 10 years have elapsed.

Although the town does not use the reservoir as its primary water source, parcels adjacent to the subject lands are provided a portion of their water supply from the reservoirs and pipelines. Conveyance of the lands through sale or default could result in terminating the water flow. Alternative land uses, such as subdivision, could conflict with adjacent public land management, interfere with a prime hunting area and range improvement projects such as controlled burning, and result in extensive disruption of important wildlife habitat. Deer and elk inhabit the area throughout the year. Hunting is heavy during hunting seasons. Golden and bald eagles hunt the area seasonally.

After the hearings on S. 1547 and H.R. 1191 and discussion with the town's legal counsel, we conducted a more careful examination of the value of the lands. Our original estimate of $250,000 was based on a very quick consideration made in preparation for hearings. As a result of the more careful analysis we estimate the value to be approximately $96,000 or $150 per acre. This value estimate has been made without the benefit of property examination and is not based on a formal appraisal.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

GARREY E. CARRUTHERS,
Assistant Secretary.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1547 as ordered reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF MARCH 3, 1919

(Public Law 332, 65th Congress; 40 Stat. 1317)

That the Secretary of the Interior is hereby authorized and directed to convey to the town of Olathe, county of Montrose, and State of Colorado, the southeast quarter of section twenty-four, township forty-eight north, range twelve, and the south, half of section nineteen, and the southwest quarter of section twenty, both in township forty-eight north, range eleven west, of the New Mexico principal meridian, in said county and State, containing six hundred and forty acres, more or less[, to have and to hold said lands for the purpose of the protection of the reservoirs and water supply pipe lines and waterworks system of said town]: *Provided*, That the said town of Olathe shall, within two years from the passage of this Act, pay for said lands, or such portions thereof as may be necessary for said purposes, at the rate of $1.25 per acre: *Provided further*, That the grant hereby made is, and the patent issued thereunder shall be, subject to all legal rights heretofore acquired by any person or persons in or to the above- described premises, or any part thereof, and now existing under and by virtue of the laws of the United States: *And provided further*, That there shall be reserved to the United States all oil, coal, and other mineral deposits that may be found in the lands so granted, and all necessary use of the lands for extracting the same: [*And provided further*, That title to the land shall revert to the United States should the same or any part thereof be sold or cease to be used for the purposes herein provided.] *And provided further, That in the event that the lands or any part thereof are sold or otherwise alienated by the town of Olathe on or before January 1, 1994, except as a consequence of a judgment at law or equity to recover sums owed by the town pursuant to a mortgage, sale to trustee, or similar agreement entered into by the town in order to secure funds for public purposes, directly related to repair, maintenance, or modernization of the reservoirs, water supply pipelines, or waterworks system of said town; the proceeds of such sale (excluding the value of any improvements made by the town) or the fair market value of the lands or part thereof (excluding the value of any improvements made by the town) at the time of such sale or alienation, whichever amount is greater, shall be paid to the United States by the town.*

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